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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-218186.2

DATE: June 3, 1985

MATTER OF: Carolina Drydocks, Incorporated

DIGEST:

1. Agency determination that protester was ineligible for master ship repair contract (MSRC); a permissible prequalification for award, constitutes a nonresponsibility determination for which there was a reasonable basis where the protester was found lacking in financial and organizational capability and without adequate production facilities, which findings the protester asserts would be rectified after it received an MSRC.
2. Protester who is ineligible for award is not an interested party to protest the qualifications of the awardee.

Carolina Drydocks, Incorporated (CDI), protests the award of a contract for vessel repairs to Deytens Shipyard, Inc. (DSI), under invitation for bids (IFB) No. N62673-85-B-073 issued by the Navy. CDI asserts that its application for a Master Contract for Repair and Alteration of Vessels (commonly known as a "Master Ship Repair Contract" (MSRC)), a prerequisite for award under this IFB, was improperly denied by the Navy, and that DSI is a nonresponsible bidder which did not comply with all of the solicitation requirements.

We find the protest without merit.

The IFB, for the repair of the USS Yanaba, was issued by the Navy on December 21, 1984. The IFB required the bidder to be either an MSRC holder, or capable of becoming an MSRC holder by the time for performance of the contract.

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The time of performance was based on vessel availability from February 14, 1985, to March 18, 1985. The IFB also stated that a bid from a non-MSRC holder would be rejected as ineligible if there was inadequate time between bid opening and the vessel's availability to permit proper assessment of the MSRC application and execution of the MSRC contract.

CDI submitted the low bid of \$149,949, DSI was next low at \$154,000, and a third bid was submitted by Delta Marine. Because CDI was not an MSRC holder, the procuring activity postponed award in order to assess CDI's pending MSRC application and to conduct a current MSRC eligibility survey. In connection with this survey, the Defense Contract Audit Agency (DCAA) performed an audit to evaluate CDI's financial standing, and the MSRC eligibility survey included an investigation of CDI's facilities. As a result of the survey and audit findings, the Navy concluded that CDI lacked the requisite financial strength, production facilities and organizational capability to qualify for an MSRC. The Navy advised CDI of this determination on February 13, and award was made to DSI on February 14.

CDI has taken exception to many of the findings of DCAA and the Navy with respect to CDI's qualifications. CDI had originally filed for an MSRC in 1981. During the intervening period, there have been a number of changes in the organization and capabilities of CDI, and the Navy has processed various information submitted by CDI with respect to the changes. CDI has never been found eligible for an MSRC. CDI alleges that the Navy arbitrarily has denied it an MSRC. However, we do not believe that it is relevant to discuss the somewhat disputed history of the processing of CDI's MSRC applications since the protest before us properly concerns only the validity of the current denial of CDI's MSRC application based on the evaluations which were performed after receipt of CDI's low bid.

The current survey found that: (1) it was not possible to ascertain whether CDI existed as a separate entity from Braswell Shipyards, Inc. (BSI), for whom all of CDI's limited ship repair experience had been performed on a sub-contract basis; (2) CDI does not have sufficient personnel to perform the required marine repairs as a prime contractor, and CDI's capabilities had declined since an earlier survey conducted in 1983; (3) CDI has no waterfront property, pier, or shop facilities, nor evidence of committed access to property on which it could perform ship repair work; (4) CDI's proposed pier lacks a lease arrangement and has inadequate dockside fire protection; (5) the proposed

shop facilities, 3 miles from the waterfront, are not covered by any lease agreement and have no electrical, pipefitting, or boiler workshop capabilities; (6) CDI has no access to a certified drydock; (7) CDI's material procurement and control organization, quality assurance, and management organization are inadequate; (8) CDI's new accounting system (prior approved system administered by BSI) is inadequate for tracking individual contract costs; and (9) CDI lacks existing facilities and organization required by MSRC holders and, other than contemplated leases, all such resources are anticipated to come from BSI.

CDI has taken exception to all of these findings. However, many of CDI's exceptions are based on its premise that it has future plans to remedy the deficiencies--if it obtains an MSRC contract. For example, CDI asserts that its financial condition is better than the Navy concludes because it would rely on BSI for income until CDI receives its MSRC; and that many of CDI's employees have returned to work for BSI pending the issuance of CDI's MSRC, at which time CDI asserts that it will rehire these employees. In essence, CDI concedes that its cost tracking system was inadequate at the time of the Navy survey by its statement that its new system did not become operational until after the survey was completed. Moreover, CDI contends that its dockside fire protection deficiency existed only on the day of the Navy survey and has subsequently been rectified. Many of CDI's assertions merely recite its belief in the adequacy of numerous items which the Navy has found unacceptable, based on CDI's differing opinion of what is required to perform MSRC repairs. (We note that while CDI is a small business, both the Navy and the Small Business Administration agree that MSRC application processing is not subject to certificate of competency procedures, and the protester has not argued otherwise.) In our view, CDI has conceded the essential validity of many of the Navy's conclusions and has not shown the unreasonableness of the remainder of the findings, but merely indicated its disagreement with the level of capability required by the Navy.

We have held that the use of an MSRC as a form of prequalification is not unduly restrictive of competition and is acceptable for purposes such as this procurement. Fairburn Marine Aviation, B-187062, Dec. 22, 1976, 76-2 C.P.D. ¶ 523. In addition, we have held that denial of an MSRC on the basis of insufficient marine repair capability and experience, as was done here, constitutes a matter of bidder responsibility. Fairburn, B-187062, supra. A procuring agency has broad discretion in making a responsibility determination, which, of necessity, must be a matter of

judgment. Such judgment should be based on fact and reached in good faith; however, it is only proper that the decision be left to the administrative discretion of the agency involved because it must bear the major brunt of any difficulties experienced in obtaining the required performance. Therefore, we will not question a nonresponsibility determination unless the protester can demonstrate bad faith by the agency or a lack of any reasonable basis. Costec Association, B-215827, Dec. 5, 1984, 84-2 C.P.D. ¶ 626.

In this case, we cannot find that the contracting officer's determination lacked a reasonable basis. As indicated above, the contracting officer found a broad range of deficiencies which indicated CDI's inadequate financial, organizational, and production capabilities. Also, while CDI takes exception to many of the particulars, it also concedes others and merely asserts that it would be able to rectify them if it were to receive an MSRC. Under these circumstances, the contracting officer had a reasonable basis for his nonresponsibility determination.

To the extent that CDI is objecting to the lengthy period of time involved in processing its MSRC application, in view of the eventual negative determination, CDI was not prejudiced. In addition, the Navy has provided reasonable explanations for the various procedures followed during the review of CDI's MSRC application and has pointed out that much of the delay was due to CDI's failure to timely provide various records and information.

In view of our finding that the Navy properly determined that CDI was ineligible for an MSRC, CDI's protest against DSI's responsibility and alleged noncompliance with various solicitation requirements is not for consideration. Since award could only be made to an MSRC holder, CDI would not be in line for award of the contract even if DSI were found ineligible for award. There is no indication that cancellation and resolicitation would be required if DSI were found ineligible, since there was a third bidder. Under these circumstances, CDI is not an interested party under our Bid Protest Regulations. 4 C.F.R. §§ 21.0(a), 21.1(a) (1985); RCC Corporation, B-218086, Apr. 3, 1985, 85-1 C.P.D. ¶ 386; Unico, Inc., B-217135, Mar. 8, 1985, 85-1 C.P.D. ¶ 287.

Accordingly, we deny the protest in part and dismiss it in part.

for *Seymour Egan*
Harry R. Van Cleve
General Counsel